

City of St. Louis

Communications Division

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Honorable Clarence Harmon
Mayor

Dept. of Public Utilities

David A. Visintainer, P.E., Director
Department of Public Utilities

DOCKET FILE COPY ORIGINAL
Communications Manager

August 11, 1998

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, NW - Room 222
Washington, D.C. 20554

Comments in re: CC Docket No. 98-122

Dear Secretary Salas:

The City of St. Louis - Communications Division is filing comments in support of the July 8, 1998 petition by the Missouri Municipals requesting the Commission to preempt Section 392.410(7) of the Revised Statutes of Missouri (RSMO), under Section 253(a) of the Communications Act of 1934, as amended, for the following reasons:

1. While the Telecommunications Act of 1996 does not provide for a frivolous approach to preemption of "barriers to entry" by the Commission, RSMO Section 392.410(7) is an example of arbitrarily excluding public entities from being telecommunications providers. See Missouri Municipals Petition at 23-25. The Commission is required to notify and seek public comment and determine if preemption of such State or local requirement is warranted.
2. Preemption by the Commission is warranted in the above-mentioned petition, as RSMO Section 392.410(7) severely restricts (and essentially prohibits) entry in the telecommunications market by municipal entities. The remedy for this barrier to entry is found in Section 253(d) of the 1996 Act. See Missouri Municipals Petition at 20-21. A cautious interpretation of RSMO 392.410(7) would find it to be inconsistent with the Act without conceding an ample preemptive role for the Commission.
3. As fully stated in the Missouri Municipals Petition, the Act does not distinguish between public and private entities for purposes of preempting barriers to entry. It is illogical to impose on public entities the burdens of private competitors, yet deprive them of the benefits of engaging in full competition. See Missouri Municipals Petition at 19, 31.

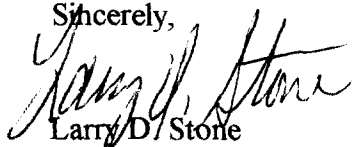
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4. The Commission should not usurp the policy decisions Congress made in the Act by differentiating between public and private entities and leaving the barrier to entry in place, as stated in the *Texas Order*, FCC 97-346. See Missouri Municipals Petition at 32.

5. Preemption of RSMO 392.410(7) would permit municipal entities to construct facilities to deliver services **and** even allow *other* telecommunications providers to use these facilities to compete with incumbent providers. Failure to preempt would stifle competition and be contrary to the purpose of the Telecommunications Act of 1996. In conclusion, the Commission must preempt RSMO Section 392.410(7) in order to promote competition.

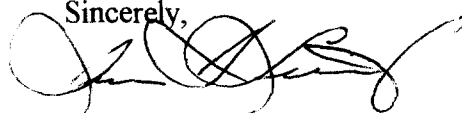
The Communications Division - City of St. Louis respectfully submits and requests consideration of our comments in support of the Missouri Municipals Petition in re: CC Docket No. 98-122

Sincerely,



Larry D. Stone
Communications Manager
Communications Division
City of St. Louis

Sincerely,



Susan S. Littlefield
Cable Regulatory Administrator
Communications Division
City of St. Louis

Sincerely,

Josef M. Laposa
Municipal Video Manager
Communications Division
City of St. Louis

ENCL: Six (6) Copies
Janice M. Myles, Common Carrier Bureau
Missouri Municipals